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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

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THE PEOPLE,

Plaintiff and Respondent,

v.

TOMASA MORALES,

Defendant and Appellant.

C069401 and C069403

(Super. Ct. Nos. CRF11299  
and CRF11444)

In a consolidated appeal, defendant Tomasa Morales contends the trial court erred by failing to award additional conduct credits pursuant to the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15, § 482). Defendant argues that the prospective application of the conduct credit provisions of the Realignment Act violates her right to equal protection under the law. Following the California Supreme Court's decision in *People v. Lara* (2012) 54 Cal.4th 896 at page 906, footnote 9 (*Lara*), we reject defendant's contention. We note that the abstract of judgment combining the sentences in both cases does not include the credits awarded in case No. CRF11299, and direct the trial court to prepare an amended abstract. We affirm the judgment.

## BACKGROUND<sup>1</sup>

Defendant committed her offenses on May 24, 2011, and August 21, 2011.

Defendant pled no contest to assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1))<sup>2</sup> in case No. CRF11299. She later pled no contest to criminal threats (§ 422) with an on-bail enhancement (§ 12022.1, subd. (a)) in case No. CRF11444.

Defendant's convictions for assault with a deadly weapon and criminal threats are serious felonies. (§ 1192.7, subd. (c)(31), (38).)

Sentencing defendant in both cases, the trial court imposed a combined prison term of five years and eight months. In its oral pronouncement the trial court awarded 79 days' presentence credit in case No. CRF11299 (53 actual and 26 conduct) and 13 days' presentence credit in case No. CRF11444 (9 actual and 4 conduct).

The trial court sentenced defendant under the September 28, 2010, revision of the presentence credit law. Under that version, a defendant with a current or prior serious felony conviction was entitled to two days of conduct credit for every four days of presentence custody. (Former §§ 2933, 4019.)

## DISCUSSION

### I

#### *Prospective Application of Section 4019*

The Realignment Act amended section 4019, entitling defendants to two days of conduct credits for every two days of presentence custody. (§ 4019, subds. (b), (c), (f).) The award of credits is not reduced by a defendant's conviction for a serious felony. This provision applies prospectively to defendants serving presentence incarceration for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).)

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<sup>1</sup> Given the nature of the issue on appeal, only the facts and procedural history relevant to our disposition are recounted.

<sup>2</sup> Undesignated statutory references are to the Penal Code.

Defendant argues that the prospective application of section 4019 violates equal protection principles. This argument was rejected by the California Supreme Court in *Lara*. (*Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

In *Lara*, the Supreme Court explained its rejection of defendant's equal protection argument as follows: "As we there [*People v. Brown* (2012) 54 Cal.4th 314, 328-330] explained, "[t]he obvious purpose" of a law increasing credits "is to affect the behavior of inmates by providing them with incentives to engage in productive work and maintain good conduct while they are in prison." [Citation.] "[T]his incentive purpose has no meaning if an inmate is unaware of it. The very concept demands prospective application." (*Brown*, at p. 329, quoting *In re Strick* (1983) 148 Cal.App.3d 906, 913.) Accordingly, prisoners who serve their pretrial detention before such a law's effective date, and those who serve their detention thereafter, are not similarly situated with respect to the law's purpose. (*Brown*, at pp. 328-329.)" (*Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

Accordingly, defendant is not entitled to the additional accrual of conduct credits under the October 1, 2011, amendment to section 4019.

## II

### ***Abstract of Judgment Correction***

There is an omission in the abstract issued in case No. CRF11444. When defendant was initially sentenced in case No. CRF11299, the abstract included the award of presentence credits in that case. After defendant's plea in case No. CRF11444, the trial court sentenced her in both cases and reiterated the earlier award of presentence credits in case No. CRF11299. While the later abstract of judgment reflects the award of presentence credits in case No. CRF11444, it does not reflect the credits awarded in case No. CRF11299.

We direct the trial court to prepare an amended abstract of judgment to reflect the total number of custody credits awarded in defendant's consolidated cases.

## DISPOSITION

The judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment reflecting the award of presentence credits in case No. CRF11299 in addition to the credits awarded in case No. CRF11444. The trial court is further directed to send a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

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HOCH, J.

We concur:

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RAYE, P. J.

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MURRAY, J.